

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.31315 of 2012

S.Nagasubramanian

.. Petitioner

Vs.

The State of Tamil Nadu rep. By
The Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi Department,
Secretariat, Chennai - 9.

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to G.O.Ms.No.139 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 26.10.2009 and consequential review order passed in G.O.(D) No.27 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 26.07.2012 quash the same and consequently direct the respondent herein to settle the pensionary benefits with interest at 18% per annum from the date of retirement till settlement within a period to be stipulated by this Court.

For Petitioner .. Mr.R.Bharath Kumar

For Respondents.. Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus to call for the records relating to G.O.Ms.No.139 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 26.10.2009 and consequential review order passed in G.O.(D) No.27 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 26.07.2012 quash the same and consequently direct the respondent herein to settle the pensionary benefits with interest at 18% per annum from the date of retirement till settlement within a

period to be stipulated by this Court.

2.The case of the petitioner is that he had rendered 34 years of unblemished service in the respondent Department. While working as Regional Joint Director of Department of Sericulture, Dharmapuri, an order of suspension was passed on 08.10.1997 placing the petitioner under suspension. Thereafter, charge memo was issued on 25.05.1998. According to the petitioner, nine charges were framed against the petitioner for certain acts of dereliction of duty while discharging his service. Not satisfied with the denial by the petitioner, an enquiry was conducted into the charges and a report was submitted by the enquiry officer on 02.07.1998 itself. According to the enquiry report, out of nine charges, Charge Nos.4,6,8,9 were held not proved. Charge Nos. 2 and 3 were dropped and Charge Nos.1 and 5 were held partly proved and Charge No.7 fully proved.

3.In the meanwhile, during the pendency of disciplinary action, the petitioner had attained the age of superannuation on 30.01.1998 and he was not allowed to retire in view of the suspension order, suspending him from service, which was passed on 08.10.1997.

4.After the report was submitted by the enquiry officer in 1998, nothing was heard from the authorities concerned and after passage of several years, in 2006, a show cause notice was issued to the petitioner on 23.11.2006 calling upon him to submit his representation for the proposed punishment of cut in pension at the rate of Rs.50/- per month for a period of four months. Simultaneously, the order of suspension was revoked by passing Government Order in G.O.(2D) No.22 Handlooms Handicrafts Textiles and Khadi (G1) Department on the same day i.e. 23.11.2006 and thereafter the petitioner was allowed to retire from service. The appeal preferred by the petitioner on 07.12.2006 was rejected by the passing the Government Order in G.O.(D) No.27 Handlooms Handicrafts Textiles and Khadi (G1) Department dated 26.07.2012.

5.Although the petitioner had submitted his explanation in 2006 to the show cause notice, still there was no action from the respondent and finally the impugned order dated 26.10.2009 was passed confirming the punishment proposed in the show cause notice dated 23.11.2006. The impugned penalty had been finally slapped on the petitioner after ten years and no explanation has been forthcoming as to why such a long period has been taken for finalising the disciplinary action.

6.Mr.R.Bharath Kumar, learned counsel appearing for the petitioner would strongly contend that the petitioner is an upright officer and he became the victim of circumstances. The

learned counsel attempted to draw this Court's attention to various facets of the charges and the explanation offered by the petitioner. But this Court refused to go into those factual controversies. However, the learned counsel would alternatively submit that in the initiation and completion of the enquiry, there has been undue delay on the part of the authorities and therefore, the delay itself would constitute grave prejudice to the rights of the petitioner and as such, the impugned penalty is liable to be interfered with on that ground alone. Learned counsel would also rely on the decision of this Court in *The Agricultural Production Commissioner and Principal Secretary to Government and Another Vs. M.Sampath and Others* (CDJ 2015 MHC 5217) and two other orders in W.P. (MD) No.12790 of 2009 and W.P.No.25971 of 2007 dated 18.12.2009 and 28.04.2011 respectively. In all these cases, this Court has held that inordinate and unexplained delay would by itself constitute a ground for quashing the disciplinary proceedings. This Court cannot have any quarrel over the said legal propositions as time and again this Court and Supreme Court have repeatedly held that initiation and completion of enquiry proceedings has to be gone through within a reasonable time frame and unexplained and inordinate delay in concluding the proceedings would by itself constitute a grave prejudice to the rights of the parties since the delay by itself would have adverse result of punishment being meted out on the employee concerned.

7.Although the punishment which is sought to be imposed on the petitioner is very minor in nature, nevertheless this Court cannot brush aside the legal position that the completion of enquiry proceedings that too, for more than ten years, in the instant case cannot be allowed to be condoned under any circumstances, be it a minor or major penalty. For the aforesaid reasons, this Court has no hesitation in allowing the writ petition. In the said circumstances, the impugned orders dated 26.10.2009 and 26.07.2012 are set aside. There shall be a consequential direction to the respondent to refund the amount, which was recovered from the petitioner, within a period of two weeks from the date of receipt of a copy of this order. Since the impugned orders have been set aside for inordinate delay and the petitioner having attained the age of superannuation as early as in the year 1998 and the retirement benefits have been withheld for such a long time, in the facts of this case, there shall be a further direction to the respondent to pay interest at the rate of 10% on the retirement benefits payable to the petitioner when it became due until the date of payment. The above directions shall be complied with by the respondent not later than two months from the date of receipt of a copy of this order.

8.The writ petition stands allowed on the above terms. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

mmi

To

The Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi Department,
Secretariat, Chennai - 9.

+1 Cc to Ms.R. Bharathkumar, Advocate sr 62526
+1 Cc to Govt. Pleader sr 62404.

KJ (CO)
sp (26/09/2017)

W.P.No.31315 of 2012

सत्यमेव जयते

WEB COPY